

REMARKS

This is in response to the Office Action that was mailed on August 24, 2005. Applicants gratefully acknowledge the Examiner's indication of allowable subject matter in this application. Claims 51, 53, 54, and 55 are cancelled, without prejudice, in order to expedite the prosecution of this application. Dependencies are corrected in claims 11 and 58. No new matter is introduced by this Amendment, and *no new issues are raised* by this Amendment. Entry of this Amendment – in order to place the application into condition for allowance or into better condition for appeal – is respectfully solicited. With this Amendment, claims 1, 2, 4-7, 9-16, 18-21, 23-26, 28-41, 43-45, 47-50, and 57-62 are pending in the application.

PERLITE. Each of claims 58 and 62 herein requires perlite as a particulate carrier. The Examiner has not shown that the prior art suggests the use of perlite in the context of the present invention. In their Amendment filed May 23, 2005, Applicants addressed this issue as follows:

With respect to the Examiner's treatment of perlite, on page 3 of the Office Action, it is respectfully submitted that information alleged by an Examiner to be "well known" in the industry but which is not supported in the record is an improper basis for finding motivation in the prior art to support a ruling of obviousness. Generalized allegations of what the skilled artisan would have been "well aware" do not satisfy the level of specificity required under the MPEP. The Examiner must point to some concrete evidence in the record, rather than relying on its assessment of what is "well recognized" or of what a skilled artisan would be "well aware." It is improper to rely upon "common knowledge and common sense" of person of ordinary skill in art to find invention obvious over combination of two prior art references. The absence any specific hint or suggestion in particular reference to support combination constitutes omission of relevant factor required by precedent. *In re Lee*, 61 USPQ2d 1430.

In the outstanding Final Rejection, the Examiner fails to address this issue in any way. Applicants respectfully request that the Examiner reopen prosecution and address this issue – which was raised by Applicants in a timely manner in their Amendment filed May 23, 2005.

Claims 57-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,468,450 (Michael) in view of US 6,376,252 (Van Lente). The rejection is respectfully traversed, for reasons including those set forth in detail in the Amendments that were filed herein

on May 23, 2005 and on November 29, 2004.

On page 4 of the outstanding Office Action, the Examiner alleges that Applicants “state Michael teach particles in the range of 1-40mm and the particles can be spherical”. The Examiner goes on to allege that Applicants “acknowledged Michael teaches spherical particles”.

Applicants emphatically did not acknowledge that Michael “teaches” spherical particles. What Applicants acknowledged is that Michael’s generic disclosure contains the words “particle diameters of between about 1 and 40 mm” and the word “spheres”. However, generic disclosure, when it is merely words, does not necessarily “teach” everything that it says. Persons of ordinary skill in the art consider the entire disclosure of a document in order to determine what the document actually *teaches*, in the sense of *enables*. The Michael patent does not enable spherical or bead-type particles having diameters in the range 2-5 mm. Michael clearly does not “teach” enough about spherical particles to render any aspect of the presently claimed invention obvious.

Michael generically recites that the “material may be in the form of sheets, strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes”. However, the thrust of the Michael disclosure – that is, what Michael actually teaches – is that relatively large, flat substrates should be employed for the detection composition.

Michael specifically discloses ¼ inch (6.35 mm) diameter discs or squares. Michael’s One Step example uses a hole puncher to make ¼ inch diameter discs or a strip cutter to make ¼ inch squares of its cellulose sheets. Michael’s Two Step example also uses cut squares or punched discs of compressed cellulose sponge vehicle. Van Lente provides “test strip materials which can be subdivided into pieces”. Column 2, lines 1-5. In Van Lente, “once the stripes or pieces of matrix test paper are dried, for the second dip they are then cut in sizes and shapes (diamond shape is satisfactory)”. Column 4, lines 23-27.

Clearly, the suggestion – that is, the enabled teaching – of the prior art in question is to provide relatively large, *flat* substrate for the detection composition. Such substrates differ significantly from the diagnostic beads recited in the present claims. The prior art relied upon fails to enable or motivate persons of ordinary skill in the art to employ “diagnostic beads”, as expressly required by the present claims. Moreover, the thrust of the prior art disclosures upon which the Examiner relies in the present rejection is *cutting* to shape the substrate.

It is respectfully submitted that the Examiner has failed to state a sustainable rejection of any of claims 57-60.

Claims 51 and 53-55 were rejected under 35 U.S.C. §103(a) as being unpatentable over Michael in view of Van Lente and US 4,621,011 (Fleischer). The deficiencies of the Michael and Van Lente references are as discussed above. Fleischer teaches cat litter made of “cellulosic particles” and describes the advantages thereof as cat litter. The present claims are concerned with, e.g., litter for the detection of blood in animal excreta comprising 5-0% diagnostic beads. Applicants do not argue that the diagnostic beads themselves operate as cat litter. Instead, the diagnostic beads employ substrates, including wood-based substrates, coated with the specified detection materials. Thus, nothing in the newly cited Fleischer patent remedies the deficiencies of the primary references. In any event, this ground of rejection is rendered moot by the cancellation of claims 51 and 53-55.

Claims 61 and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Michael in view of Van Lente and ES 2,025,025 (Tharrault). The rejection is respectfully traversed.

The deficiencies of the Michael and Van Lente references with respect to claims 61 and 62 (perlite) are as discussed above. Nothing in the newly cited Tharrault patent remedies the deficiencies of the primary references.

As noted above, Michael generically recites that the “material may be in the form of sheets, strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes”. The thrust of the Michael disclosure is that relatively large, flat substrates should be employed for the detection composition.

Van Lente provides “test strip materials which can be subdivided into pieces”. In Van Lente, “once the stripes or pieces of matrix test paper are dried, for the second dip they are then cut in sizes and shapes (diamond shape is satisfactory)”.

The Tharrault disclosure is not logically combinable with either Michael or Van Lente. They teach sheets, strips, shreds, discs, etc. The Examiner fails to demonstrate how Tharrault’s teachings relating to granulation are relevant to the sheets, strips, shreds, discs, etc. taught by Michael and Van Lente. It is axiomatic that the proposed modification of the technology of a primary reference cannot change the principle of operation of a reference. MPEP 2143.01. In the present rejection, the Tharrault modification suggested by the Examiner would dramatically change the products as they are contemplated by Michael and Van Lente.

It is respectfully submitted that the Examiner has failed to state a sustainable rejection of claims 61 and 62.

The Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008 with any questions.

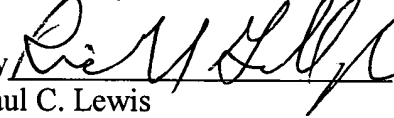
Application No. 10/090,008
Amendment dated November 15, 2005
After Final Office Action of August 24, 2005

Docket No.: 4384-0104PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By  #28,781

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